

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant:** Amerada Hess Corporation, represented by Attorney Philip Lombardo

**Date Application filed with the Town Clerk:** October 27, 2004

**Nature of request:** A Special Permit to continue operation of an existing gasoline filling station and convenience store subject to the conditions of existing Special Permit ZBA FY2004-00015 with modification of façade and signs and substitution of regular gasoline for diesel fuel on the premises at 468 West Street, (Map 20C, Parcel 10, B-VC Zoning District.)

**Legal notice:** Published on November 3 and November 10, 2004 in the Daily Hampshire Gazette and sent to abutters on October 29, 2004.

**Board members:** Tom Simpson, Ted Rising, Susan Pynchon

**Submissions:** The Petitioner originally submitted:

- A Management Plan for the Hess Express store and upkeep of the property
- Three sign submissions, for the building façade, the gas pumps' canopy, and the free-standing sign
- A site plan surveyed by Gregory S. Gallas for Control Point Associates, Inc., dated 10/18/04
- A plan of the store interior, labeled "Preliminary Dwg", by Royston, dated 10/06/04

The Petitioner subsequently submitted:

- Revised Management Plans for both Subway and Hess operations.
- A sign and graphics plan for the site, prepared by Ayoub Engineering, dated 12/3/04
- A revised site improvement plan, prepared by Ayoub Engineering, dated 12/7/04

The Planning Department submitted:

- Memorandum 2004-32, dated 11/8/04, outlining the zoning requirements and other issues of the site
- Memorandum 2004-33, dated 12/2/04, noting additional issues for consideration at the continued hearing of 12/6/04
- Memorandum 2004-34 to the Planning Board, giving the Interim Director's perspective on closing the West Street curb cut

The Planning Board submitted a memo to the ZBA, dated 12/2/04, with seven

recommendations concerning the impact on traffic safety and design for the Village Center site under consideration.

The Town Engineer submitted an estimate, dated 12/6/04, and revised on 12/10/04 of the engineering costs for site improvements.

**Site Visit:** November 16 & 18, 2004

The ZBA members visited the site with staff at different times- November 16 and 18<sup>th</sup>, 2004. Alan Micale, a consulting engineer for Hess from Ayoub Engineering, Inc., attended the initial site visit. The business was closed and the site roped off, so that the actual movement onto and within the site - to the pumps and the convenience store - was not observed.

Noted was the close proximity of the West Street curb cut to the intersection, essentially within the turning radius of the intersection.

The Board also noted:

- The probably direction of traffic flow from Pomeroy Lane north through the site, or the two entrances from West Street going in the opposite direction.
- The number of signs on the site – three (3) two-sided ones on the pumps plus four (4) more fastened to the bollards in front of the pumps, two (2) proposed for the canopy, the stand-alone at the intersection, two (2) proposed for the store front for Subway and Hess Express (and the size of these signs), two existing (2) backlit signs in the windows for Subway and ATM, and various other paper signs affixed to the windows.
- The windows, which comprise about half the front façade of the building, and the panels proposed to be green.
- The location of the proposed picnic table and bike rack on the southern side of the building next to Pomeroy Lane.
- The sidewalk outside the convenience store that ends about 10 feet to the south of the building, and the location of the proposed extension of this sidewalk to a future Town sidewalk along Pomeroy
- Recycling facilities not apparent.

#### **Hearing, November 18, 2004**

Philip Lombardo, legal representation for Hess Corporation, presented the application. Also present on behalf of Hess were Andy Lautenbacher, Hess Northern Permit Manager, and Steven Pedro, consulting engineer from Ayoub Engineering.

Mr. Lombardo stated that the petitioner is seeking a Special Permit to allow Hess to operate the gasoline pumps and the convenience store that will contain both Hess

Express and Subway. He stated that DB Mart filed for bankruptcy and closed the store quickly, so the process of acquiring the business has been rushed. Moreover, Hess has had minimal cooperation from DB Mart. As a result, many of the questions the Board may have concerning the amount of business at the convenience store, the peak hours of activity, the traffic flow, when the tanker delivers gasoline, etc. are unknown to Hess.

Mr. Lombardo stated that he, Mr. Lautenbacher and Mr. Micale met with Planning Department staff on Tuesday, November 16<sup>th</sup>, and the discussion prompted Hess to propose the following:

- A picnic table and bike rack, to be located on the grassy area on the southern side of the convenience store next to Pomeroy Lane.
- An extension of the walkway in front of the building, going south and connecting with a future Town sidewalk along Pomeroy Lane. The applicant suggested adding to the walkway later when the Town actually builds its sidewalk.
- Match the color of the bottom panels in front of the building with the green of the "Hess Express" sign.
- Submit a bond to help contribute to the costs of improvements to the roadway and sidewalks along their property for both West Street & Pomeroy Lane.

The only significant issue for the applicant is the curb cut on West Street just north of the intersection with Pomeroy Lane. Mr. Lombardo said that Hess does not want to close off that entrance to the gas pumps. They want to capture the north-south traffic and keep the circulation moving on the site. The applicant stated that an entrance "after" (north of) the pumps would be disastrous for business; in addition, requiring motorists to enter from the north would result in confusing traffic flow at the gas pumps.

The tanker drops its product (gasoline) off on the passenger side of the truck, so the tanker must enter from Pomeroy Lane. Then, according to the petitioner, the tanker has to exit straight out onto West St. without turning, since it cannot navigate the turning radius around the corner of pumps in order to exit at the northern edge of the property.

There is a right-of-way shared by the site under consideration and the property immediately to the north. The right-of-way extends the entire length of the northern boundary of the site.

During the hearing, a suggestion was made that perhaps the traffic could be channeled to one-way into the site off West St. (except for the tanker) in order to minimize traffic, particularly left turns, exiting into the intersection. The site could be designed so that the sidewalk and safety not be compromised. Extra signs saying "No Exit" could be added.

The Board asked if the tanker turns left when exiting the site. Mr. Lombardo answered that Hess doesn't know; there has been little communication with the previous owner. They do know that an independent contractor delivers the gasoline and the tanker arrives

at “down times”. They will use the same contractor. The Board requested the petitioner to find out the travel patterns of the tanker and frequency of deliveries.

Another suggestion posed was to design a curb that only the tanker can traverse, and Hess offered to work with the Town Engineering Department on designing this.

The petitioner said that there is some urgency with the timing of this Special Permit application because the existing service station is in bankruptcy, and Hess has a limited time in which to use the DB Mart signage. They do not want to operate with bags placed on all the signs.

A Board member suggested that perhaps the tanker turning difficulties may be a red herring, since the tanker can back up to reposition itself in order to make the turn. Mr. Lombardo replied that Hess discourages backing up while on site for safety reasons.

In terms of signs for the business, Mr. Lautenbacher stated that he likes the existing Subway sign that is currently above the doorway to the convenience store. It is a carved wooden one, nicely painted, and they would like to keep it, re-locating it to the front right panel. They disagree with the Planning Department memo stating that the Subway sign is too big for the proposed location. A suggestion was made that the Subway sign be located on the southerly side of the building facing Pomeroy Lane. Mr. Lautenbacher replied that they would think about that, but prefer it in the front of the building.

The standing sign proposed for the corner near the intersection would be of the same dimensions as the existing DB Mart sign. The Board expressed approval of that sign and location – stating that the colors and clarity were an improvement over the existing sign.

The Board said that the signs fastened to the bollards in front of the tanks along West Street were excessive. The petitioner agreed to remove any signage there.

The “Hess Express” sign proposed for above the store entrance also may be problematic as to size and location. The Planning Department memo contained a suggestion for a minor change in the sign design, but the petitioner disagreed with any changes to their standard logo. In addition, the Building Commissioner Bonnie Weeks said that there may be a problem with putting a sign above the doorway because it would cover the roof vent. The petitioner wondered if the vent is merely decorative since the existing Subway sign partially covers it. Ms. Weeks repeated that the building needs to be vented and that the new sign not cover the vent if it is functional.

The Board addressed safety concerns for the site. A Board member who lives near the site stated that the convenience store and pumps are busy all the time. Children go to the store on bikes after school and on weekends, and there are often bikes everywhere on site. The children bike all over the neighborhood, including along West Street & Pomeroy Lane, and people often park cars between the pumps and along West Street.

The Board noted that the buildings to the north have more businesses, and the activity impacts this site as well. A suggestion was made that perhaps an entrance further north than the one at the intersection is needed.

Jason Skeels, Town Engineer, spoke about the possibility of designing a new curb and sidewalk so that a tanker would be able to make the curve around the pumps and exit at the northern edge of the site, away from the intersection. He stated that for safety concerns, curb cuts located near traffic signals are never recommended. The engineering design standard is to move curb cuts at least 100 feet away from an intersection. Using a turning-radius template for the size of tanker used in this case, Mr. Skeels demonstrated the possibility that a tanker could make the swing within the curb line and exit at the northern driveway. He also stated that it may be possible to make some concessions for the tanker only – e.g., double curbing to allow only the tanker to exit, perhaps a channeled driveway angled north to prohibit exits into the intersection, moving the curb cut to the north a bit and channeling it, Cape Cod berms, Belgian block pavers, etc.

Mr. Skeels stated that the Town of Amherst has taken over the State highway in this area in order to improve the intersection. The Town plans to widen the road, adding left hand lanes and sidewalks. The goal is to make the Village Center and intersection more pedestrian friendly and safe.

Questions concerning snow removal and accidents at the intersection were raised. Mr. Skeels said that the snow previously was plowed to the northern side of the property near the dumpsters. He also said that accidents occurred regularly at the intersection prior to the traffic light installation, but he does not know the frequency now.

The Board noted that intersection improvements will be discussed at the Planning Board meeting December 1, 2004, and that they would like input from the Planning Board.

Ted Rising moved to continue the hearing to December 6, 2004 at a location to be determined. Susan Pynchon seconded the motion; the vote was unanimous to continue the hearing to December 6<sup>th</sup>.

#### **Hearing Continuation, December 6, 2004**

Representing the applicant were Philip Lombardo and Don Allison, lawyers; Andy Lautenbacher, permit manager; Alan Micale, consulting engineer from Ayoub Engineering; and Rob Woodland, traffic engineer from McMahon Associates.

The remaining issues to discuss included 1) Signs, 2) Management Plan and 3) Traffic Flow and Entranceways.

1. Signs - The applicants presented the Board with a "Sign & Graphics Plan" prepared by

Ayoub Engineering. The plan showed the existing and proposed signage and colors for the convenience store, freestanding, and canopy signs. The brighter Hess green, not the Subway green, is proposed for the four front panels of the store building.

Regarding the proposed "Hess Express" sign above the entrance to the convenience store, Mr. Lombardo said that they would check with the Building Commissioner about covering the building vent with the sign. They have checked the original plans for the building, and believe the vent is simply decorative. If the vent is functional, they will relocate the sign. One suggestion was to bring the sign out from the building a bit in order not to block the air flow.

The Board asked about the signs at the end of the bollards by the gasoline pumps. The applicant replied that they are removed.

Mr. Lautenbacher stated that another sign Hess often adds is a 1 x 2 ft. sign at the exit saying "Thanks for your business". It is not shown on the submitted plan. The Board and the applicants agreed that there are plenty of signs already and this will not be added to this site.

The Board and the applicant discussed the permanent signs in the front windows of the storefront. Section 12.28 of the Bylaw includes in the definition of "signs" those that are "displayed indoors for the purpose of being viewed from the out of doors." The applicant offered to remove the cigarette signs and the backlit "Subway" sign from the windows. The Board agreed that the other backlit signs - "Open" and "ATM" - are useful and should remain. Other paper signs currently in the windows are temporary.

2. Management Plan - The applicants said that they still do not have a management plan that includes the Subway operation. They will submit it as soon as possible. The Board said that the plan must explain who is responsible for maintaining the cleanliness of the site, litter pickup, recycling and trash removal, snow plowing, etc., for both Hess Express and the Subway.

The applicant stated that they would be responsible for maintaining the entire site, including the Subway operation. Apparently Hess has never sublet to a sandwich shop before, as they usually provide their own sandwiches. But since Subway was established, Hess is amenable to another business continuing to operate at this location.

In terms of number of employees, the applicant stated that Hess will use two employees, and most likely that Subway will have two employees as well. Five employees on site at one time would be the most requested.

In terms of snowplowing, the applicant said that the neighbors to the north, Dick Johnson and Jerald Gates, have agreed to include the plowing of the Hess property as well. They will do one continuous plowing from the gas station to the northern side of their stores.

For delivery of gasoline, Mr. Lautenbacher said that Hess still doesn't have a complete schedule. They know that the tanker comes from Braintree, and delivers on an as-needed basis two-three times per week. The tanker takes about 40 minutes to deliver the gasoline, and turns off the engine during that time. The "off-peak" hours for gasoline delivery are not usually at night, but rather 10 AM – 2 PM.

3. Traffic Flow, Entranceways and Intersection safety - Mr. Lombardo stated that the main issue for Hess continues to be the proposed closing of the curb cut at the intersection. The applicant believes that if the entranceway is closed, customers will not use the site. If getting to the pumps is a hassle, the customers will keep going and not buy Hess gasoline. The applicant feels that convenience is the important factor in capturing customers, and that this driveway presents the preferred north-south orientation. They submitted a sketch of the curb cut as an "entry only" cut, and propose that a sidewalk can be constructed to be markedly different than the driveway.

Rob Woodland, traffic engineer of McMahon Associates of Boston spoke on behalf of the petitioner. He admitted that there are troubles with the curb cut so close to the intersection. But he said that closing that curb cut then will create other difficulties of traffic circulation within the site. With three pumps and six positions at the pumps, it is best that the customers access the pumps directly from West Street, not from the north or off Pomeroy Lane, he alleged.

Mr. Woodland said that the applicant supports the compromise suggested at the previous hearing – that being to design that particular curb cut for entrances only. Eliminating exits should improve safety, with fewer cars turning into the traffic right at the intersection.

According to Mr. Woodland, the fuel vehicle may block access if it's required to leave the site at the northern curb cut as the Planning Board has recommended. In addition, putting a divider at the northern driveway may interfere with the path of the truck. The petitioners do not want a conflict with the neighbors to the north concerning the tanker and customers being forced to use just that entrance/exit.

Mr. Woodland stated that rather than shutting the driveway near the intersection completely, clear signage of "Entrance Only" or "No Exit" may lessen current problems. He added that, according to the Department of Motor Vehicles records, fewer than 10 accidents had been reported between 2000 and 2003 at the intersection. These years were prior to the installation of the traffic light. Mr. Woodland did not report the Amherst Police Department or insurance records of traffic accidents at that location.

Jason Skeels, Town Engineer, said that the Town is redesigning the intersection, and access will be closed at the driveway near the intersection within the next few years. The current design for the northern entrance includes two 24-ft. spans, with a pedestrian island in between. A fuel truck operating at off-peak hours will be able to negotiate the northern redesigned curb cut. Moving the existing intersection cut 100 feet away from the intersection puts it too close to the northern entrance, so it has been eliminated in future plans for that Village Center.

One telephone call prior to the continued hearing had been made to the zoning office regarding this application. Elizabeth French, 34 Carriage Lane, said that she lives nearby and passes through the intersection several times daily. She is worried about safety, even with the new traffic light. She said that having the curb cut so close to the intersection is confusing and dangerous for the north-south traffic. Motorists don't know whether a signaling driver is turning onto Pomeroy or into the gas station. She said that negotiating the intersection is rather harrowing at times. Ms. Finn also related that an accident had occurred on Pomeroy Lane near the intersection earlier that day (12/6/04).

The Board inquired how the applicant will be able to restrict drivers to "entrance only" at that driveway. Motorists go out "entrances" all the time. Mr. Woodland replied that by 1) narrowing the width of the driveway, 2) changing the angle of the entrance to point northward, and 3) adding "do not exit" signs on site, use should be limited.

Attorney Don Allison stated that if the Town is going to close the problem entranceway, they will do it, and Hess will have to adjust. But the applicant wants the business to succeed, and this entranceway is important for initial success.

Board member Ted Rising said that "better (design), safer and more attractive" are the key issues for him.

Board member Susan Pynchon said that she agrees with the applicant, and questions why the proposed compromise for the driveway wouldn't be workable.

Mr. Skeels replied that the Town wants to add sidewalks and an extra lane for left turns, so closing the entrance will provide more safety for pedestrians.

Chair Tom Simpson said that the proposed business and surrounding ones are part of a developing Village Center; the gas station is not just a pit stop. The Planning Board wants more openness, with a continuous sidewalk for pedestrians.

Mr. Simpson gave an example of a successful Getty station in South Hadley that has the same set-up as the Planning Board is recommending. The station is on a similarly small lot, located at a busy intersection and the entrances are beyond the pumps, away from the intersection. He stated that the configuration seems to work well.



Mr. Rising stated that he finds the northern curb cut to be too wide at 38 feet. If narrowed, it might be better. He questioned the safety aspects of the island in the middle. Mr. Skeels responded that the width will allow the tanker to exit there.

Mr. Lautenbacher offered his opinion that a redesigned "entrance only" curb cut could be attractive and useful, but Mr. Rising wondered how realistic it is to expect a redesigned entranceway and signage to restrict outbound traffic.

Mr. Woodland stated that closing the curb cut now would be too much for a standard change of ownership at this site. Hess wants to help the Town, he said, but the Town in turn should want this location to contain a successful business operation.

The Board debated the effect of closing the curb cut on potential customers. One Board member predicted that it would not change business volume; two Board members stated the opposite.

Mr. Rising suggested that, since the existing driveway is 28 feet wide, that the narrower 12-ft. wide angled entrance be placed as far north as possible within that 28 ft. area. That would result in effectively moving the beginning of the angled entrance another 10 feet away from the intersection. The driveway would then be about 20 feet from the intersection instead of the current 10 feet.

Susan Pynchon moved to close the hearing; Ted Rising seconded the motion. The Board voted unanimously to close the hearing.

### **Public Meeting:**

The Board agreed that the proposed use of the site as a gasoline station and convenience store will not change significantly under the new ownership. They also agreed that the suggested site improvements offered by the applicant will improve both the safety and appearance of a critical intersection in South Amherst's Village Center. The petitioner has been forewarned that the Town will be changing the traffic lanes, closing curb cuts and adding sidewalks in the future, but the Board agreed with the Petitioner that the proposed compromise regarding the proposed temporary curb cut on West Street will enable the petitioner to begin its business in a more advantageous manner.

### **Findings:**

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings, that:

- 10.380 and 10.381 – The proposed Subway, convenience store and gasoline station are suitably located and compatible with existing uses in the district. The use with a new owner will not significantly change the impact on the neighborhood.

The Village Center contains a variety of uses including a restaurant, bar, health club, offices, a church and multi-family residences. The proposal is compatible with these uses.

- 10.382 and 10.385 – The proposal will not constitute a nuisance due to noise, odor, lights or visually offensive site features, since most features of the site will remain the same, such as the lighting. Signage and colors will be improved, and the petitioners have offered to try to reduce the noise of the compressors in the back of the store.
- 10.383 – The proposal will not be a hazard to abutters, vehicles or pedestrians any more than the previous owners of the business, and may be an improvement with the redesign of the entranceway closest to the intersection of Main Street and Pomeroy Lane. The landscaping, plus the addition of a picnic table and bicycle rack will promote convenience to the patrons. The 24-hour service has proved not to be offensive, but a convenience to the abutters.
- 10.384, 10.386 and 10.388 – The facilities, parking and off-street loading are adequate. The clear delineation of parking spaces, plus the improvements to the handicapped ramp will improve parking on site. The landscaping improvements will improve the appearance of the Village Center. Signs were examined at length, and although numerous, and not excessive for the dual uses on the property.
- 10.385 – The proposal reasonably protects adjoining premises with the additional landscaping, the redesigned curb cut, and the lighting directed downward. The addition of refuse and recycling containers near the picnic table will help prevent litter.
- 10.387 – The proposal provides for vehicular and pedestrian movement within the site. Because space is limited, design of the site and curb cuts are critical, and the petitioner has proposed special measures to improve safety for pedestrians and vehicles at the intersection.
- 10.389 and 10.396 – The proposal provides adequate methods of disposal for refuse and recycling. The site contains a screen for the dumpster.
- 10.393 – Lighting will remain as it has been for the past several years and does not intrude on the adjacent properties.
- 10.397 – The proposal provides for a picnic table for patrons of the Subway, and a bicycle rack for the children and others who bike in the area.
- 10.398 – The proposal is in harmony with the intent of the Bylaw, since it provides needed services in the area, and will continue to be convenient, particularly to the residents of South Amherst.

**Zoning Board Decision:**

Ted Rising moved to APPROVE the petition. Susan Pynchon seconded the motion.

For all the reasons stated above, the Board VOTED unanimously to APPROVE a Special Permit to Amerada Hess Corporation to continue operation of an existing gasoline filling station and convenience store, with modification of façade and signs and substitution of regular gasoline for diesel fuel on the premises at 468 West Street, (Map 20C, Parcel 10, B-VC Zoning District.), with conditions.

\_\_\_\_\_  
TOM SIMPSON

\_\_\_\_\_  
TED RISING

\_\_\_\_\_  
SUSAN PYNCHON

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2004 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.

TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2005.  
NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2004  
to the attached list of addresses by \_\_\_\_\_, for the Board.

NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2004,  
in the Hampshire County Registry of Deeds.

**Town of Amherst**  
**Zoning Board of Appeals**

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants a Special Permit to Amerada Hess Corporation to continue operation of existing gasoline filling station and convenience store on the premises located at 468 West Street, (Map 20C/Parcel 10, B-VC Zone) subject to the following conditions:

1. The hours of operation shall be 24 hours a day, 7 days a week.
2. The number of employees shall be limited to five working on the premises at any time.
3. The business shall be operated as described in the Management Plan presented to the Board and approved at the December 16, 2004 public meeting.
4. When the Town constructs a sidewalk along the north side of Pomeroy Lane near the intersection with Route 116, the petitioner shall extend the existing concrete sidewalk that runs along the front of the building to meet the new sidewalk along Pomeroy Lane. The sidewalk shall be built to Town specifications. The existing dogwood tree by the sidewalk shall be relocated.
5. Any business sign changes or color changes for the building, canopy or standing signs for the site must be presented to the Board for approval at a public meeting.
6. An air pump, bicycle parking loops, trash receptacles and a picnic table, all permanently mounted on concrete platforms, shall be provided on the site.
7. An angled, geometrically constrained entrance way shall be constructed and substituted for the existing West Street entrance near the intersection of West St. and Pomeroy Lane. The curb cut shall be no more than 12 feet wide, and shall be as far north from the intersection as possible. The surrounding pavers on the streetside traffic islands shall be Belgian block and the curbing designed to be mountable for the fuel tanker truck exit only. Appropriate signage saying "Do Not Enter" shall be added facing the interior of the site to discourage drivers from exiting at this location. The entrance way shall be designed by Hess and approved by the Town Engineer.
8. A site plan showing revised parking, landscape plantings, pedestrian pavement, picnic table, bike rack, trash/recycling receptacles, the new entrance way and other site improvements shall be submitted to the Board for approval at a business meeting no later than March 15, 2005.
9. All landscape plantings consisting of three (3) civic scale street trees and assorted shrubs and groundcover of suitable species, appropriate hardiness and size planted along the south side of the site, as subsequently approved by the Board, shall be planted by June 15, 2005.
10. All landscape features and plantings shall be installed and permanently maintained.

11. Recycling facilities for paper, bottles and cans, and empty motor oil containers shall be provided at appropriate locations both within the building and outside.
12. The dumpster shall not exceed the height of the dumpster enclosure.
13. The number of permanent window signs shall be reduced to the existing backlit "Open" and "ATM" signs only, for a total of two (s) signs only.
14. The petitioner shall provide a performance bond of \$8,000.00 payable to the Town of Amherst, for completion of the approved site improvements. (See condition #8.)
15. This permit shall expire upon change of ownership of the business.

---

TOM SIMPSON, Chair  
Amherst Zoning Board of Appeals

---

DATE